

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 570 of 2000

to

FIRST APPEAL No 578 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

HAJURJI BHALAJI THAKORE

Appearance:

MR ND GOHIL, AGP for Appellant No. 1
MR GC MAZMUDAR with MR HG MAZMUDAR for Appellant No. 2
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT
and

Date of decision: 19/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are Appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code at the instance of the State and the acquiring body challenging the common judgment and awards passed by the Reference Court under Section 18 of the said Act.

2. The lands in question are situated in village Serisa, Taluka Kalol, District Mehsana and were acquired for the Narmada Canal Project. The date of Section 4 Notification is 19th July, 1990.

3. The Reference Court after appreciation of the evidence on record determined the market value of the acquired lands at Rs.48/- per sq. mtr. and also granted the statutory allowances available to the claimants under the Act on the basis of this valuation.

4. The learned counsel for the appellants sought to urge before us the question of limitation.

4.1 It appears that the contention as to limitation was taken in the written statement by the State in a casual and routine manner. No issue as to limitation has been raised by the Reference Court. However, the Reference Court has examined this aspect and on the facts of the case has found that the applications under Section 18 were filed within the period of limitation. This contention does not require any further discussion for the simple reason that admittedly, the award under Section 11 was declared by the Land Acquisition Officer on 29th February, 1992 whereas admittedly, the reference applications were made on 24th March, 1992. Thus, in any case, counting the shortest period of limitation available to the claimants under Section 18 sub-section (2), the applications are within time.

5. The learned counsel for the appellants sought to rely upon a previous decision of the High Court (by a Division Bench) by way of an Appeal and for the purpose of persuasion alone. This is a judgment in First Appeal No.1824 of 1998 (and the group) decided on 15th December, 1998 (Coram: J.M. Panchal and M.H. Kadri, JJ.). This decision pertains to the acquisition of the lands

situated in village Piyaj, and the relevant Notification under Section 4 was dated 27th August, 1990.

5.1 It is pertinent to note that this decision was neither cited nor referred to before the Reference Court but has been placed before us for consideration.

6. On a careful consideration of the said decision, we find firstly, that the village Piyaj may perhaps be situated in the general locality of the instant village Serisa, but the evidence on record does not indicate that the lands of village Piyaj are comparable with those of the instant village Serisa. The second distinguishing feature we find that in the instant case, the villages Serisa, Saij, Jaspur and Borisana are all close to each other, having common boundaries and equal fertility. Therefore, for all practical purposes, these four villages are presumed to have equal market value, unless shown otherwise. In this context, we note the observations made by the aforesaid Bench in the aforesaid judgment, in paragraph 5 thereof, to the effect that the acquisition of lands from the village Borisana would not offer good guidance for the purpose of valuing the lands situated in the village Piyaj. Thus, since the earlier Bench found that the lands of Piyaj and the lands of Borisana were not comparable, we do not see how the valuation of lands of village Piyaj determined by the said Bench in the said decision could possibly be of any assistance to the appellants in the instant case.

7. Now referring to the evidence led by the claimants and appreciated by the Reference Court, we find that it consists of oral evidence as also documentary evidence.

8. So far as oral evidence is concerned, only the broad aspects need to be noted namely, that the villages Saij, Jaspur and Borisana are all contiguous to the instant village Serisa, have common boundaries and equal fertility. The claimants have therefore suggested that the market value of agricultural lands situated in these villages could be identical or almost the same. It is in this context that the documentary evidence requires to be appreciated.

9. The Reference Court has relied upon an earlier award in respect of acquisition of lands from the village Sabasapur, wherein the lands were valued at Rs.48/- per sq. mtr. However, the learned counsel for the respondent - claimant states on information that an Appeal is pending in this court from the said award under Section

18, and for this reason the same may not be relied upon.

10. The Reference Court has relied upon Exh.35 which is an earlier award delivered by the Reference court under Section 18 of the Act, pertaining to acquisition of lands from the village Jaspur. The relevant Notification under Section 4 was dated 2nd January, 1986 (three and a half years prior to the instant Notification). In the said award, the lands were valued at Rs.40/- per sq. mtr. However, in an Appeal filed by the claimants, a Division Bench of this court raised the market value to Rs.52/- per sq. mtr. This was a decision in First Appeal No.43 of 1998 (Coram: J.M. Panchal and R.P. Dholakia, JJ.) decided on 28th June, 1999. It is stated before us that this decision was taken to the Supreme court by way of SLP No.1814 of 2000, which was summarily dismissed by order dated 16th March, 2000. Thus, the lands of village Jaspur, were valued at Rs.52/- per sq. mtr. in respect of a Notification which was three and a half years prior to the instant Notification. Even if the legally accepted principle of granting 10% increment per year is applied, the market value would be raised from Rs.40/- to Rs.48/- per sq. mtr., which is precisely what the Reference Court has determined in the instant case.

11. The Reference Court has also relied upon Exh.33 which is an earlier award under Section 18 of the said Act in respect of acquisition from the village Borisana. The lands in question were valued at Rs.40/- per sq. mtr. in terms of Section 4 Notification dated 28th July, 1983 i.e. to say, 7 years prior to the instant Notification. Thus, if the normal principle of an increment of 10% was to be applied here, the market value would certainly be higher than Rs.48/- per sq. mtr. which has been determined by the impugned judgment and awards. This judgment in a Reference under Section 18 at Exh.33 was accepted by the State and no appeal was preferred.

12. The Reference Court has also relied upon Exh.24 pertaining to acquisition of lands from the village Borisana. The relevant Notification under Section 4 was dated 7th September, 1989 i.e. to say, about 1 year prior to the instant Notification. The Reference Court valued the acquired lands at Rs.50/- per sq. mtr. This was challenged by the State by way of an Appeal before this court namely, First Appeal No.2523 of 1997 (and the group) which was summarily dismissed (Coram: Y.B. Bhatt and C.K. Buch, JJ.) by judgment and order dated 23rd April, 1998, valuing the lands at Rs.70/- per sq. mtr.

but allowing only Rs.50/- per sq. mtr. in view of the restricted claim in the reference. The judgment delivered is at Exh.25. Thus, Exhs. 24 and 25 establish a market value of Rs.50/- per sq. mtr. in respect of a Notification about a year prior to the instant Notification.

13. The claimants also relied upon Exh.26 which is an earlier award under Section 18 of the said Act dealing with acquisition of lands from the village Saij. The Section 4 Notification was dated 28th July, 1983 i.e. to say, 7 years prior to the instant Notification. This decision at Exh.26 valued the acquired lands at Rs.80/- per sq. mtr. It is stated before us that the State has accepted this award and no Appeal has been preferred therefrom.

14. The claimants also relied upon Exh.32 which is a previous award under Section 18 of the Act pertaining to acquisition of lands from the village Borisana. The relevant Notification under Section 4 is dated 6th August, 1981 i.e. to say, almost 9 years prior to the instant Notification. This decision values the acquired lands at Rs.45/- per sq. mtr. It is stated before us that the State has accepted this award and no Appeal has been preferred therefrom.

15. We are, therefore, required to see this evidence collectively and assess the market value of the acquired lands on that basis.

16. The learned counsel for the appellants has not been able to discredit the evidence led by the claimants at an equal value being assignable to the agricultural lands situated in the villages Serisa, Saij, Jaspur and Borisana. Even a reference to the map would indicate that these four villages have contiguous boundaries and are situated within a larger circle of about 10 to 12 kms. Thus, there is absolutely no reason for us to disbelieve the evidence of the claimants. They assert that the fertility, the yield, the economic value, the input costs for raising crops etc. would be very similar and almost identical.

17. On account of these factors, we find that Exhs.35, 33, 24 and 25, 26 and 32 would be relevant and pertinent for assessing the reasonableness of the market value assessed by the Reference Court at Rs.48/- per sq. mtr.

18. On a collective examination of the evidence on

record, as discussed hereinabove, we find that the determination of market value by the Reference Court at Rs.48/- per sq. mtr. is eminently reasonable and requires to be upheld particularly since there is no evidence to the contrary led by the appellants. Even on an independent assessment of the evidentiary material discussed by us hereinabove, we would be inclined to arrive at a market value of Rs.48/- per sq. mtr., or perhaps slightly higher. In any case, in the present group of Appeals by the State and the acquiring body, we find that, on the reappreciation of the evidence on record, there is no justification for any reduction in the market value as determined by the Reference Court. Consequently, the impugned judgment and awards are required to be confirmed and are accordingly confirmed.

19. These Appeals are, therefore dismissed with no orders as to costs.

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